



WEB COPY

A.No.34



RESERVED ON
28.10.2024

PRONOUNCED ON
19.12.2024

A.No.342 of 2006
in I.P.No.16 of 2005

K.KUMARESH BABU,J.

The present application had been taken out by Official Assignee seeking to set aside the sale of the property belonging to the insolvent in favour of the fourth respondent and consequently direct the property to be vested with the Official Assignee.

2. Heard Ms.Sumathy, learned counsel for the Official Assignee, Mr.Nagusha, learned counsel appearing on behalf of the second respondent and Mr.Babu, learned counsel appearing on behalf of the fourth and fifth respondent.

3. It is the case of the Official Assignee that the insolvent during the enquiry had indicated that the property had been mortgaged to the third respondent herein under the mortgage created on 07.01.2002. The Official Assignee had sent a letter to the third respondent to appear before the Official Assignee on 26.07.2005. On the said date, the third respondent had appeared and taken time for production of documents and thereafter, it was adjourned to 05.08.2005, on which date the third respondent had claimed that there was theft



A.No.34

WEB COPY

in the office and needed some more time. Again on 18.08.2005, the third respondent had sought time up to 22.09.2005 for production of documents and even on that date, he wanted time. However, on 20.10.2005, he had produced a letter indicating that the insolvent had created a mortgage in his favour and has also handed over the documents to him. But, however, on 26.10.2005, the third respondent had sent a letter to the Official Assignee enclosing a Sale Deed dated 19.10.2005 in which the third respondent had transferred the property to the fourth respondent through the fifth respondent. It had come to the knowledge of the applicant that the entire sale consideration had been paid in cash and not through cheque which had created a suspicion that too after appearing before the Official Assignee and having taken time, the sale deed had been executed and therefore, the sale had taken place in a suspicious circumstances and therefore, sought to set aside the same. They have examined an Assistant Section Officer attached to the Office of the Official Assignee who had marked seven documents under exhibits A1 to A7 which included the letters written by the third respondent either by himself or through his counsel under Exs.A3, A5 & A6. Ex.A3 is the document sent by the counsel for the third respondent to the first respondent/insolvent indicating that if he fails to make the repayment of the amount legal proceedings would be initiated to bring the sale of the property to recover the amount. Even though the receipt that has been attached in the said letter indicates that it had been sent by the

<https://www.mhc.tn.gov.in/judis>



A.No.34

WEB COPY

registered post with acknowledgment due, no acknowledgment had been placed before this Court to substantiate that the said notice had been received by the first respondent insolvent. Under Exs.A5 and A6, the receipts of payment from the auction purchaser namely the fourth respondent had been placed on record. A reading of the same would suggest that the third respondent herein had issued a receipt for the payment done by the fourth respondent to the third respondent through the fifth respondent. The entire amount had been paid by cash. Hence, it is the case of the Official Assignee that when an immovable property is being sold, that too of high value at that relevant point of time, payment should have been made only through cheque and not through cash which creates a doubt of the transaction. In the light of the fact, that in spite of the receipt of such amount, the sale deed was executed only on 19.10.2005 i.e. after the receipt of notice by the third respondent from the Official Assignee. She would further contend that having appeared before the Official Assignee and taken time, the third respondent had not informed the Official Assignee that such auction sale had taken place and the property had been knocked out by a third party in the auction sale and the entire payment had been made to the third respondent. Therefore, she would pray this Court to set aside the auction sale.

4. Countering the arguments of the Official Assignee, Mr.Nagusha,

<https://www.mhc.tn.gov.in/judis>



A.No.34

WEB COPY

learned counsel appearing on behalf of the third respondent would contend that even before the order of adjudication of the first and second respondents as insolvents, auction notice had been issued pursuant to which auction was conducted, in which the fourth respondent was declared as insolvent. He would contend that the fifth respondent was appointed as an auctioneer for conducting the auction and he had conducted the auction on 06.05.2005. He would submit that since, there was theft within the premises of the third respondent in which a watchman was also murdered, he did not have access to the Office for a brief period and therefore, there was delay in producing the relevant details to the documents. He would further submit that the third respondent had led in evidence through his Manager and had marked eight documents under Exs.R1 to R8. He would submit that under Exs.R4, 5 & 6, the payment made by the fourth respondent could be evidenced and therefore, even before the notice to the third respondent of the insolvency proceedings, the property had been sold by the third respondent through the fifth respondent to the fourth respondent. Hence, the sale is a bonafide sale on the basis of mortgage created by the first respondent insolvent and therefore, the application ought not to have been entertained.

5. Mr.A.Babu, learned counsel appearing on behalf of the fifth respondent would reiterate the submissions made by the learned counsel for the



A.No.34

WEB COPY

third respondent and submit that much before the Official Assignee notice, the auction had been conducted by the fifth respondent auctioneer and therefore, it cannot be termed as a suspicious transaction. He would also submit that the auction notice was published in a leading Tamil Daily, even as early as on 03.05.2005 for the auction to be conducted on 06.05.2005 and therefore, the prayer sought for by the Official Assignee need not be entertained by this Court and the application to be dismissed.

6. I have considered the rival submissions made the learned counsel appearing for their respective parties and perused the materials available on record.

7. It is to be noted that inspite of notice to the fourth respondent purchaser, he had neither been represented by a counsel nor he has participated in this application.

8. It is an undisputed fact that the first respondent insolvent had mortgaged the property standing in his name in favour of the third respondent in the year 2002. It is the case of the third and fifth respondent that since, the first respondent insolvent had not repaid the amount, the property was brought to auction by making a publication in Malai Malar on 03.05.2005 and the



A.No.34

WEB COPY

neither the third respondent nor the fifth respondent had produced the said publication. In fact, the fifth respondent had not led in any evidence, inspite of granting sufficient opportunity. From the records it could be seen since, the fifth respondent did not let in any evidence, evidence on his side was closed and thereafter, an application to reopen the evidence was ordered by this Court and even thereafter, no evidence had been let in by the fifth respondent. The fourth respondent in spite of having granted time to produce his evidence, he had not even attempted to produce any evidence and he was absent whenever chance was given to him and has not let in any evidence and his side evidence was also closed. The claim of the fifth respondent is that he had made a publication in the newspaper on 03.05.2005 and fixing the date of auction on 06.05.2005, only leaving two days between the publication and the auction. This itself creates a doubt on the claim of the fifth respondent in view of the fact that such publication was not produced before this Court. All that was produced before this Court was a receipts issued on 06.05.2005 and 19.05.2005 to drive home their case that the full bid amount had been paid by the fourth respondent. The said receipts evidences that the payment was made only by cash. If such full payment had been made by the fourth respondent auction purchaser, there is no explanation on the side of the third and fifth respondents as to why there was a delay in execution of the sale deed which came to be

<https://www.mhc.tn.gov.in/judis>



A.No.34

WEB COPY

executed only on 19.10.2005 as evidenced from Ex.R8. Further, the third respondent having appeared before the Official Assignee on various dates before the execution of the sale deed, he had not produced any document to indicate that he had put on notice the Official Assignee about the auction sale. The fifth respondent had failed to let in any evidence to substantiate the auction sale that is supposed to have been conducted on 06.05.2005. The third respondent even though, had produced the receipts under Exs.R4 & R5, he had not produced any valid evidence to substantiate that he had in fact received such payment by producing any documents such as his income tax assessment evidencing disclosure of receipts of such amount on the particular date. This further creates a doubt on the claim made by the third and fifth respondent that the property had been sold by way of auction much before the notice received by them from the Official Assignee that too particularly when the sale deed under Ex.R8 had been executed and registered only on 19.05.2005. Further, the auction purchaser namely the fourth respondent had not been diligent enough in prosecuting the case which would further create a suspicion whether he is an auction purchaser or a name lender to the third respondent to defeat rights of the creditors of the insolvent.

9. For the aforesaid findings and reasoning, I am inclined to allow this application as prayed for by the Official Assignee and set aside the sale deed in



A.No.34

Document No.2927 of 2005, dated 19.10.2005 by holding the same to have been made under suspicious circumstances and the property described in the schedule to the Judges Summons shall stand vested with the Official Assignee.

19.12.2024

Gba

Index :Yes/No

Internet:Yes/No



WEB COPY



A.No.34

K.KUMARESH BABU,J.

Gba

A.No.342 of 2006
in I.P.No.16 of 2005

19.12.2024